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SUPREME COURT, U.S.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1a to 636a)

Supreme Court of the United States

OCTOBER TERM, 1955

No. 72

FRANK COSTELLO, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 12, 1955

CERTIORARI GRANTED OCTOBER 10, 1955

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Docket Entries

CRIMINAL DOCKET — CRIM. NO. C141/9

THE UNITED STATES

—VS.—

FRANK COSTELLO

VIOLATION—T 26 Sec 145(b) US Code

attempt to defeat and evade a large part of the income tax due and owing by him for the calendar years of 1946, 1947, 1948 and 1949

4 counts

Date	*Defendant*	*Fined*
5-17-54	FRANK COSTELLO	30000 00

Date	*Cash Acct. Deft.*	*Rec'd*
5/17/54	LCF.	5 0

Date	*Proceedings*
3/11/53	Filed Indictment
3/11/53	Bench warrant ordered. Bench Warrant Issued. Noonan, J.
3/12/53	Filed notice of appearance by Joseph Leary Delaney, Atty 350—5th Av. NYC.
4/13/53	Filed stipulation—deft. withdraws application for writ of habeas corpus ad pros. without prejudice. So ordered. Noonan, J.

Docket Entries

Date	*Proceedings*
4 15 53	Filed affdt for writ of habeas corpus ad pros. Issued writ. Ret. 4/23/53.
4 23 53	Deft. produced on writ. Deft. arraigned on warrant. Pleads not guilty. Bail $5000. 20 days for motions. Clancy, J.
3 13 53	Filed affdt and order to show cause—for issuance of writ of habeas corpus ad pros. Noonan, J. Memo endorsed—This motion has been withdrawn by stipulation heretofore argued. 4/24/53. Noonan, J.
4/24 53	Filed affdt in opposition to motion filed 3/13/53.
4/30/53	Government's oral motion to discharge writ of Habeas corpus granted. Clancy, J.
4/30/53	Filed affdt by J L Delaney in opposition to motion to discharge writ of habeas corpus.
5/11/53	Filed bench warrant and entered marshal's return—Deft. produced on writ of habeas corpus ad pros. 4/15/53.
5/13/53	Filed affdt and notice of motion for bill of particulars. Memo endorsed 6/10/53—Motion granted as to items designated in notice of motion as (a)(b)(c); denied as to items (d)(e). Ryan, J.
6/10/53	Filed affdt in opposition
6/16/53	Filed copy of writ of habeas corpus and marshal's return, "Writ Satisfied" 4/30/53 Clancy, J.

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Date	*Proceedings*
6/19/53	Filed notice of settlement and order granting motion for bill of particulars. Ryan, J.
6/29/53	Filed bill of particulars.
9/ 9/53	Filed Transcript of record of proceedings, dated 4/23/53.
9/23/53	Filed bond dated 4/23/53 for $5000. Mfgrs. Casualty Ins. Co. surety.
11/ 2/53	Filed Order to show cause for permission to leave the limits of the S.D.N.Y.—Conger, J. Memo endorsed "Motion denied except to extent consented to by the Government, i.e., that bail limits are extended to include defendants wife house at Sands Point, Long Island on proper consent of surety." 11/4/53. Dimock, J.
	Filed affidavit of Deft Frank Costello for permission to leave the jurisdiction of this court, and consent of surety.
11/ 6/53	Filed Order and consent of surety, that deft F. Costello be and hereby is permitted to leave the jurisdiction of this Court and go to the Eastern District of New York and that motion is denied in all other respect, without prejudice to renew application upon a proper showing. Dimock, J.
11/24/53	Filed motion for further bill of particulars Ret 11/30/53. Memo Endorsed—11/30/53. Motion Denied. Dimock, J.

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12/ 1/53	Filed affidavit of Lloyd P. MacMahon, Asst. U. S. Atty in opposition of motion filed 11/24/53.
12/ 4/53	Filed Transcript of record of proceeding, dated 11/4/53.
1/27/54	Filed Order to show cause for an order under Rule 17(c) of Fed Rules of Criminal Procedure directing that the books, papers etc. designated in subpoenas duces tecum served upon witness Michael J. Tanico, Phil Kastel and Charles B. Murphy be produced before the Court at a time prior to trial to wit on 2/11/54 and said books papers etc. may be inspected by parties hereto and their attys, etc. I. R. Kaufman, J.
2/ 2/54	Filed Order to Show Cause why trial should not be adjourned from March 1 to July 1, 1954—Ret 2/4/54—Memo Endorsed 2/4/54 "Trial adjd to April 5, 1954. Defense counsel instructed that he must be ready to go to trial on that Day". McGohey, J.
2/ 4/54	Filed Affidavit of Lloyd F. MacMahon Chief Asst. U. S. Atty in opposition to motion for further postponement of trial.
2/ 5/54	Memo endorsed on order to show cause filed 1/27/54 "Motion Granted. Order Settled and signed today 2/5/54." McGohey, J.
2/ 5/54	Filed order that Michael J. Tanico, Phil Kastel and Charles B. Murphy shall produce books,

Docket Entries

Date	*Proceedings*
	and records specified in subpoenas duces tecum etc. and that the cost of transporting aforesaid books and records to NY from New Orleans shall be borne by the United States not to exceed $600. etc. and the cost of returning said books etc. shall be borne by the U. S. not to exceed $600. McGohey, J.
2/ 8/54	Filed Notice of Motion for discovery and inspection etc.—Ret 2/1/54—See memo End 2/6/54—McGohey, J.
2/19/54	Filed Order to show cause Ret 2/23/54, directing that the Minutes of the Grand Jury returning the indictment herein be examined and the indictment dismissed etc. Edward Weinfeld, D.J.
2/20/54	Filed letter to McGohey, J. from Hilary J. Gaudin, Esq. dated 2/16/54 with the statement "This letter and the attached schedule were received at my chambers Sat, 2/20/54—McGohey, J."
2/19/54	Filed Transcript of record of proceedings dated 12/7/53 and 2/4/54.
2/26/54	Filed Opinion #20961—Motion to inspect Grand Jury Minutes denied. Weinfeld, J.
4/ 1/54	Filed order to show cause why an order should not be made herein directing the issuance of a commission to examine under oath Frank Erickson at Milan, Michigan. Dimock, J.

Docket Entries

Date	*Proceedings*
4/ 2/54	Memo endorsed on motion papers filed 4/1/54—Motion granted on condition deft. serve interrogatories by 4/6/54. Govt to be served cross-interrogatories expeditiously. Defendant will not use granting of this motion at the opening of the trial as basis of adjournment of trial on Apr 5 or whenever it opens.—So ordered. Goddard, J.
4/ 2/54	Filed affidavits of prejudice.
4/ 5/54	Filed interrogatories to be propounded to Frank Erickson.
4/ 7/54	Filed Order that motion to take deposition of Frank Erickson as a witness be granted, that deft serve the proposed interrogatories by April 6, 1954, the Clerk to forward necessary papers to take this deposition, said deposition to be returned to the Clerk and motion is granted that deft does not use granting hereof as a ground for adjournment etc., Goddard, J.
4/ 7/54	Filed Transcript of record of proceedings, dated 3/19/53.
4/ 9/54	Issued commission to Milan, Mich. (Erickson).
4/22/54	Filed interrogatories—Deposition of Frank Erickson.
4/27/54	Filed affdt and order authorizing the U. S. Atty to employ Dr. Howard G. Bruenn to

Docket Entries

Date	*Proceedings*
	examine Joseph Henschel and submit a medical report. U. S. Atty authorized to pay fee. McGohey, J.
4/29/54	Filed order granting motion to vacate order of Hon. H. W. Goddard dated 4/7/54 to take testimony of Frank Erickson. Goddard, J.
4/ 5/54	Before McGohey, J. Trial begun. Defendant makes application for a bill of particulars and further time. Motions denied.
4/ 6/54	Trial cont'd. Deft. moves for the withdrawal of a juror and for a mistrial. Motions denied. Trial continued on April 7, 8, 9, 12, 13, 14, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, May 3, 4, 5, 6, 7.
5/10/54	Trial Continued—Deft. moves to dismiss the indictment and for a judgment of acquittal—Motion Denied.
5/11/54	Trial Continued. Deft. Rests—Govt. Rests—Deft renews motions made at close of Govt's Case—Motion Denied.
5/12/54	Trial Continued. Summations by counsel.
5/13/54	Trial Continued. Charge by the Court 11:22 A.D.—Officer Sworn—Jury Retires 11:25 A.M.—Verdict 9:40 P.M.—Not Guilty on count one Guilty on counts 2-3-4—Jury Polled—Sentence 5/19/54 at 11 A.M. Bail increased to $25000. and to be posted at 11 A.M. on 5/14/54.

Docket Entries

Date	*Proceedings*	
5/17/54	Defendant moves to set aside verdict, for a new trial and for arrest of judgment. Motions denied. McGohey, J.	
5/17/54	Filed Judgment #59217—Five Years on counts 2, 3 and 4 to run concurrently at a place of confinement to be designated by the Atty. Genl. Fined $10,000. on counts 2, 3 and 4 and to stand committed until fines are paid on counts 2, 3 & 4 or he is otherwise discharged according to law. Deft. remanded. Bail discharged. Defendant to pay the cost of prosecution as taxed. McGohey, J.	
5/17/54	Issued commitment and copies.	
5/17/54	Filed Notice of Appeal.	$5.00

* * * * *

Indictment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

—against—

FRANK COSTELLO,

Defendant.

The Grand Jury charges:

1. On or about the 14th day of March, 1947, in the Southern District of New York, Frank Costello, the defendant, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1946 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, in the Borough of Manhattan, City of New York, a false and fraudulent income tax return, wherein he stated that his net income for said calendar year was the sum of $23,673.90 and that the amount of tax due and owing thereon was the sum of $8,338.72, whereas in truth and in fact, as he then and there well knew, his net income for the said calendar year was the sum of $31,630.54 upon which said net income he owed to the United States of America an income tax of $13,224.88.

[Section 145(b), Internal Revenue Code; Title 26, U. S. Code, Section 145(b).]

Indictment

SECOND COUNT

The Grand Jury further charges:

1. On or about the 9th day of March, 1948, in the Southern District of New York, Frank Costello, the defendant, who, during the calendar year 1947, was married, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America, for the calendar year 1947, by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York, in the Borough of Manhattan, City of New York, a false and fraudulent joint income tax return, on behalf of himself and his said wife, wherein it was stated that their net income for the said calendar year was the sum of $17,307.23 and that the amount of tax due and owing thereon was the sum of $5,085.94, whereas, in truth and in fact, as he then and there well knew, their joint net income for the said calendar year was the sum of $72,561.45 upon which said net income there was owing to the United States of America an income tax of $41,215.53.

[Section 145(b), Internal Revenue Code; Title 26, U. S. Code, Section 145(b).]

THIRD COUNT

The Grand Jury further charges:

1. On or about the 14th day of January, 1949, in the Southern District of New York, Frank Costello, the defendant, who, during the calendar year 1948, was married, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and

his wife to the United States of America for the calendar year 1948 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York in the Borough of Manhattan, City of New York, a false and fraudulent joint income tax return on behalf of himself and his said wife wherein it was stated that their net income for said calendar year was the sum of $12,325.30, and that the amount of tax due and owing thereon was the sum of $2,153.48, whereas in truth and in fact, as he then and there well knew, their joint net income for the said calendar year was the sum of $47,619.92, upon which said net income there was owing to the United States of America an income tax of $15,965.22.

[Section 145(b), Internal Revenue Code; Title 26, U. S. Code, Section 145(b).]

FOURTH COUNT

The Grand Jury further charges:

1. On or about the 10th day of March, 1950, in the Southern District of New York, Frank Costello, the defendant, who, during the calendar year 1949 was married, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1949 by filing and causing to be filed with the Collector of Internal Revenue for the Third Internal Revenue Collection District of New York in the Borough of Manhattan, City of New York, a false and fraudulent joint income tax return on behalf of himself and his said wife wherein it was stated that their net income for said calendar year was the sum of $22,110.70, and that the amount of tax due and owing thereon was the sum of $4,910.94,

whereas in truth and in fact, as he then and there well knew, their joint net income for the said calendar year was the sum of $61,739.18, upon which said net income there was owing to the United States of America an income tax of $23,521.40.

[Section 145(b), Internal Revenue Code; Title 26, U. S. Code, Section 145(b).]

MYLES J. LANE,
United States Attorney.

Foreman

Notice of Motion for Bill of Particulars

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C 141-9

[SAME TITLE]

SIR:

PLEASE TAKE NOTICE that upon the annexed affidvit of Joseph Leary Delaney, duly sworn to on the 13th day of May, 1953, the indictment and all the proceedings heretofore had herein, the defendant will move this Court, at a stated term thereof for the hearing of motions in criminal causes, appointed to be held in Room 318 of the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 25th day of May, 1953, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order directing the United States Attorney to serve and file a bill of particulars of the said indictment, setting forth the following:

(a) A statement of which items in the tax returns filed by the defendant for the calendar years 1946 to 1949, inclusive, the United States Attorney claims are false;

(b) A statement of whether the United States Attorney claims that the gross income during said calendar years was falsely reported and, if so, the amount the United States Attorney claims should have been reported as gross income;

(c) A statement of whether the United States Attorney will claim that any item of exemptions or expenses or deductions was falsely claimed during said calendar years and, if so, a statement as to each item that the United States Attorney claims was falsely claimed as an exemp-

tion, expense or deduction and the amount the United States Attorney will claim should have been reported as an exemption, expense or deduction;

(d) A statement of whether the United States Attorney bases his claim of tax evasion for each of said calendar years upon a net worth—expenditure theory and, if so, a statement by the United States Attorney of the alleged net worth of the defendant as of the beginning and end of each of said calendar years, including each of the items which the United States Attorney claims makes up such net worth of the defendant as of the beginning and end of each of said calendar years;

(e) A statement of whether the United States Attorney bases his claim of tax evasion for each of said calendar years upon a net worth—expenditure theory and, if so, a statement by the United States Attorney of the expenditures the United States Attorney claims said defendant made during each of said calendar years, specifying the amounts of such expenditures and to whom made and the approximate dates thereof; and for such other further and different relief as to the Court may seem just and proper in the premises.

Dated: New York City, May 13, 1953.

Yours, etc.

JOSEPH LEARY DELANEY
Attorney for Defendant
Office and P. O. Address
350 Fifth Avenue
New York 1, N. Y.

To:

HONORABLE J. EDWARD LUMBARD,
United States Attorney,
Southern District of New York.

Affidavit of Joseph Leary Delaney, Read in Support of Motion

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

C 141-9

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

JOSEPH LEARY DELANEY, being duly sworn, deposes and says:

I am the attorney for Frank Costello, the defendant in the above entitled matter, and submit this affidavit in support of his motion for a bill of particulars.

On or about March 11, 1953, the indictment, containing four counts, each alleging a violation of Section 145(b) of Title 26, United States Code, was filed.

The first count, in substance, alleges that on or about March 14, 1947, the defendant wilfully and knowingly attempted to defeat and evade a large part of his income tax for the calendar year 1946 by filing a false and fraudulent income tax return wherein he stated that his net income for said calendar year was $23,673.90 and that the amount of tax due thereon was $8,338.72, whereas, such count alleges, his net income for said calendar year was $31,630.54 and the amount of tax owed thereon was $13,224.88.

The second count, in substance, alleges that on or about March 9, 1948, the defendant wilfully and knowingly attempted to defeat and evade a large part of his income tax for the calendar year 1947 by filing a false and fraudulent

income tax return wherein he stated that his net income for said calendar year was $17,307.23 and that the amount of tax due thereon was $5,085.94, whereas, such count alleges, his net income for said calendar year was $72,561.45 and the amount of tax owed thereon was $41,215.53.

The third count, in substance, alleges that on or about January 14, 1949, the defendant wilfully and knowingly attempted to defeat and evade a large part of his income tax for the calendar year 1948 by filing a false and fraudulent income tax return wherein he stated that his net income for said calendar year was $12,325.30 and that the amount of tax due thereon was $2,153.48, whereas, such count alleges his net income for said calendar year was $47,619.92 and the amount of tax owed thereon was $15,965.22.

The fourth count, in substance, alleges that on or about March 10, 1950, the defendant wilfully and knowingly attempted to defeat and evade a large part of his income tax for the calendar year 1949 by filing a false and fraudulent income tax return wherein he stated that his net income for said calendar year was $22,110.70 and that the amount of tax due thereon was $4,910.94, whereas such count alleges his net income for said calendar year was $61,739.18 and the amount of tax owed thereon was $23,521.40.

On April 23, 1953, the defendant was arraigned in this Court before Hon. John W. Clancy, United States District Judge, and pleaded not guilty to said indictment.

The defendant has advised me that to the best of his knowledge and information he correctly reported his net income and the tax due thereon for each of the calendar years 1946 to 1949, inclusive, and that he does not know how the United States Attorney arrived at any figures different from those reported by him. I have advised the defendant that, in order to prepare adequately for trial and to avoid surprise and to prevent unnecessary delay, it is essential for

me to be advised of the transactions which the United States Attorney claims the defendant had resulting in the difference in net income he reported for the calendar years 1946 to 1949, inclusive, and the net income for such calendar years alleged in the indictment, and of the sources from which the United States Attorney claims he derived such other income, and of the approximate times and places the United States Attorney claims he received such alleged additional income, and of the exemptions, expenses and deductions the United States Attorney claims should not have been taken in the defendant's tax returns for the calendar years 1946 to 1949, inclusive, in computing his net income for such years, and of how the United States Attorney computes the amount of tax allegedly owed for each of such years.

However, the defendant is unable to furnish any such information to me.

No previous application for a bill of particulars has been made herein.

WHEREFORE, in order to prepare adequately for trial and to avoid surprise and to prevent unnecessary delay, I respectfully request that this Court grant an order directing the United States Attorney to supply a bill of particulars setting forth the information requested in the notice of motion herein.

(Sworn to by Joseph Leary Delaney on May 13, 1953.)

Affidavit of Lloyd F. MacMahon, Read in Opposition to Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:

LLOYD F. MACMAHON, being duly sworn, deposes and says:

1. I am Chief Assistant United States Attorney for the Southern District of New York and am familiar with the facts and proceedings relating to this motion and the prosecution of the above entitled matter. I make this affidavit in opposition to the motion of defendant Frank Costello for an order directing the United States Attorney to serve and file a bill of particulars to the indictment herein.

2. The indictment charges Frank Costello with wilfully and knowingly attempting to defeat and evade a large part of his income tax for the calendar years 1946 through 1949, by filing false and fraudulent income tax returns. The returns in question include both individual and joint returns, the latter made on behalf of the defendant and his wife, Loretta B. Costello. As to each year in which the attempted evasion is charged, the indictment first specifies the reported net income and the reported amount of tax due thereon and then alleges the actual net income and the true amount of tax due.

Affidavit of Lloyd F. MacMahon

3. As more particularly appears from the affidavit of Harold B. A'Hearn, sworn to May 29, 1953, defendant was given a statement on March 6, 1953, showing the claims of the government with respect to the specific items falsely reported on defendant's returns for the years covered by this indictment. By petition sworn to May 12, 1953 (copy of which is annexed as Exhibit A), defendant and his wife instituted a proceeding in the tax court for the redetermination of their tax liability for the years 1941 through 1950 on May 14, 1953. I verily believe Exhibit "A" to be a true and accurate copy of the said petition so filed.

4. Said petition, Exhibit A, shows on its face that defendant is himself in sufficient possession of information concerning the Government's claims with respect to the returns which are the subject of this indictment to allege and undertake to prove the same facts which would constitute his defense here.

WHEREFORE, your deponent respectfully prays that defendant's motion be denied.

(Sworn to by Lloyd F. MacMahon on June 1, 1953.)

Exhibit A Annexed to Affidavit of Edward F. MacMahon

THE TAX COURT OF THE UNITED STATES

FRANK COSTELLO and LORETTA B. COSTELLO,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioners hereby petition for a redetermination of their tax liabilities and of the deficiencies set forth by the Commissioner of Internal Revenue in his notices of deficiency (Form 1234) dated March 6, 1953, and as a basis of their proceeding respectfully allege as follows:

1. The petitioners are husband and wife and citizens of the United States, with their residence at 115 Central Park West, in the Borough of Manhattan, City, County and State of New York. The returns for the period here involved were filed with the Collector for the second or third district of New York.

2. The notices of deficiency (copies of which are attached hereto and marked Exhibits "A-1" and "A-2") were mailed to the petitioners on or about March 6, 1953.

3. The taxes in controversy are income taxes for the calendar years 1941 to 1950, inclusive. The Commissioner has determined total deficiencies to be due as income taxes for the years 1941 to 1950, inclusive, as follows and as

more fully appears from the Commissioner's statements and reports (copies of which are attached hereto and marked Exhibits "B-1" and "B-2"):

a) As against petitioner, FRANK COSTELLO, individually:

Calendar Year	*Deficiencies and penalties*
1941	$13,683.69
1942	$13,869.35
1944	$161,248.71
1945	$108,835.39
1946	$32,207.57

b) As against petitioners, FRANK COSTELLO and LORETTA B. COSTELLO, jointly and severally:

Calendar Year	*Deficiencies and penalties*
1943	$71,488.57
1947	$79,560.30
1948	$51,462.00
1949	$45,188.20
1950	$7,991.39.

4. The determination of the tax set forth in the notices of deficiency is based upon the following errors:

AS TO THE PETITIONER, FRANK COSTELLO, individually
(Calendar years 1941, 1942, 1944, 1945, 1946)

a) In determining that the petitioner, Frank Costello, understated his income in the amount of $19,116.28 on his income tax return for the calendar year 1941.

b) In determining that the petitioner, Frank Costello, understated his income in the amount of $17,134.47 on his income tax return for the calendar year 1942.

c) In determining that the petitioner, Frank Costello, earned taxable income in the amount of $105,420.77 which

he did not report on his income tax return for the calendar year 1944.

d) In determining that the taxable partnership income reported on income tax return of petitioner, Frank Costello, for the calendar year 1944 was understated in the amount of $2,550.38.

e) In determining that petitioner, Frank Costello, was not entitled to a deduction of $13,880.43 as an interest charge for the calendar year 1944.

f) In determining that the petitioner, Frank Costello, had earned taxable income in the amount of $74,745.02 which he did not report on his income tax return for the calendar year 1945.

g) In determining that the taxable partnership income reported by the petitioner, Frank Costello, was understated in the amount of $7,264.35 for the calendar year 1945.

h) In determining that the petitioner, Frank Costello, had earned taxable income in the amount of $35,347.95 which he did not report on his income tax return for the calendar year 1946.

i) In determining that the taxable partnership income reported by the petitioner, Frank Costello, was understated in the amount of $3,478.16 for the calendar year 1946.

j) In determining that petitioner, Frank Costello, was not entitled to a deduction of $1,100.00 expended for charitable contributions during the calendar year 1946.

As to the Petitioners, Frank Costello and Loretta B. Costello, jointly and severally (Calendar Years 1943, 1947, 1948, 1949, 1950).

k) In determining that the petitioners, Frank Costello and Loretta B. Costello, had earned taxable income in the

amount of $54,937.77 which was not reported on their income tax return for the calendar year 1943.

l) In determining that the taxable partnership income reported by the petitioners, Frank Costello and Loretta B. Costello, was understated in the amount of $732.26 for the calendar year 1943.

m) In determining that the petitioners, Frank Costello and Loretta B. Costello, or either of them, were not entitled to a forgiveness amounting to seventy-five (75%) per cent of the 1942 tax liability in computing the total liability under the Current Tax Payment Act of 1943.

n) In determining that the petitioners, Frank Costello and Loretta B. Costello, had earned taxable income in the amount of $90,797.70 which was not reported on their income tax return for the calendar year 1947.

o) In determining that the mortgage interest reported by the petitioners, Frank Costello and Loretta B. Costello, to the extent of $48.26 was not substantiated for the calendar year 1947.

p) In determining that the petitioners, Frank Costello and Loretta B. Costello, were not entitled to a deduction of $1,000.00 for loan interest for the calendar year 1947.

q) In determining that the petitioners, Frank Costello and Loretta B. Costello, were not entitled to deduction of $25.00 as a contribution to charity for the calendar year 1947.

r) In determining that the deductible item of interest of $13,768.74 paid to the Collector of Internal Revenue must be taken in the calendar year 1947 rather than in the calendar year 1944.

s) In determining that the petitioners, Frank Costello and Loretta B. Costello, had taxable income in the amount

of $58,275.60 which they did not report on their return for the calendar year 1948.

t) In determining that the petitioners, Frank Costello and Loretta B. Costello, were not entitled to mortgage interest to the extent of $43.62 for the calendar year 1948.

u) In determining that the loan of $14,027.79 to the Crescent Music Company, which the petitioners, Frank Costello and Loretta B. Costello, reported as a bad debt in the calendar year 1948, could not be deducted as an ordinary expense for that year and determining that such loss was a capital loss.

v) In determining that the petitioners, Frank Costello and Loretta B. Costello, earned taxable income in the amount of $59,059.22 which they did not report on their income tax return for the calendar year 1949.

w) In determining that the petitioners, Frank Costello and Loretta B. Costello, were not entitled to a deduction for mortgage interest to the extent of $39.36 for the calendar year 1949.

x) In determining that the petitioners, Frank Costello and Loretta B. Costello, were not entitled to a deduction for depreciation to the extent of $10.38 in the calendar year 1949.

y) In determining that the petitioners, Frank Costello and Loretta B. Costello, had earned taxable income in the amount of $17,629.27 which they did not report on their income tax return for the calendar year 1950.

z) In determining that the petitioners, Frank Costello and Loretta B. Costello, were not entitled to a deduction for mortgage interest to the extent of $34.92 for the calendar year 1950.

Exhibit A Annexed to Affidavit of Lloyd F. MacMahon

aa) In determining that the petitioners, Frank Costello and Loretta B. Costello, were not entitled to a deduction of $97.00 for depreciation in the calendar year 1950.

bb) In determining that the petitioners, Frank Costello and Loretta B. Costello, were not entitled to a deduction of $10,000.00 for legal fees in the calendar year 1950, on the ground that such amount represents the expense of sale of a capital asset.

As to Penalties

cc) In determining that the alleged deficiencies for the calendar years 1941 to 1950, inclusive, were due to fraud with the intent to evade the tax.

dd) In determining that the petitioners, Frank Costello and Loretta B. Costello, made a substantial underestimation of the estimated taxes for the calendar years 1945 to 1949, inclusive.

ee) In determining that the petitioners, Frank Costello and Loretta B. Costello, should be liable for fifty (50%) per cent additional penalty with respect to the calendar years 1941 to 1950, inclusive, pursuant to Section 293(b) of the Internal Revenue Code and liable for additional interest penalties for the years 1945 to 1949, inclusive, pursuant to Section 294(d)(2) of the Internal Revenue Code.

5. The facts upon which the petitioners rely for a basis of this proceeding are as follows:

As to the Petitioner, Frank Costello

a) The petitioner, Frank Costello, filed a timely Federal Income Tax Return for the calendar year 1941, reporting therein all of his taxable income, showing a net income of $17,164.81 and paid the tax due thereon.

Exhibit A Annexed to Affidavit of Lloyd F. MacMahon

b) The petitioner, Frank Costello, filed a timely Federal Income Tax Return for the calendar year 1942, reporting therein all of his taxable income, showing a net income of $13,906.31 and paid the tax due thereon.

c) The petitioner, Frank Costello, filed a timely Federal Income Tax Return for the calendar year 1944, reporting therein all of his taxable income, showing a net income of $50,632.47 and paid the tax due thereon.

d) Upon information and belief the petitioner, Frank Costello, reported all the taxable partnership income received by him from the Louisiana Mint Company, as disclosed by partnership returns for the fiscal year ending November 30, 1944.

e) That during the calendar year 1944 a judgment was rendered in favor of the United States of America to satisfy tax liens asserted by the Bureau of Internal Revenue against the fund of $27,200.00, which was adjudged to be the property of the petitioner, Frank Costello. The deductible item of interest was obtained from computations made by the Collector of Internal Revenue. The Commissioner has determined that this item of interest, which he computes to be $13,768.74, is a proper deduction for the calendar year 1947.

f) The petitioner, Frank Costello, filed a timely Federal Income Tax Return for the calendar year 1945, reporting therein all of his taxable income, showing a net income of $56,894.97 and paid the tax due thereon.

g) Upon information and belief the petitioner, Frank Costello, reported all the taxable partnership income received by him from the Louisiana Mint Company, as disclosed by partnership returns for the fiscal year ending November 30, 1945.

Exhibit A Annexed to Affidavit of Lloyd F. MacMahon

h) The petitioner, Frank Costello, filed a timely Federal Income Tax Return for the calendar year 1946, reporting therein all of his taxable income, showing a net income of $23,673.90 and paid the tax due thereon.

i) Upon information and belief the petitioner, Frank Costello, reported all the taxable partnership income received by him from the Louisiana Mint Company, as disclosed by partnership returns for the fiscal year ending November 30, 1946.

j) That the contributions of $1,100.00 disallowed by the Commissioner for the calendar year 1946 were properly deductible. In any event, the schedule of charitable contributions set forth in the return of the petitioner, Frank Costello, disclosed total contributions of $6,338.50, of which the petitioner took as a deduction against his adjusted gross income the sum of $5,257.40.

k) That during the years 1940 to 1947, inclusive, the petitioner, Frank Costello, made payments to the Collector of Internal Revenue on account of assessments and judgments entered thereon for years prior to 1941. These prior assessments and the judgments entered thereon, together with the interest, have been fully paid and satisfied. Upon information and belief, that the interest deductions to which the petitioner, Frank Costello, is entitled exceed the total deductions which have been credited to his returns. That the petitioner, Frank Costello, has been unable to determine what part of these payments constitute principal and what part constitute interest.

As to the Petitioners, Frank Costello and Loretta B. Costello

l) That petitioners, Frank Costello and Loretta B. Costello, filed a timely joint Federal Income Tax Return for the calendar year 1943, reporting therein all of their

taxable income, showing a net income of $60,370.46 and paid the tax due thereon.

m) That the petitioners, Frank Costello and Loretta B. Costello, are entitled to a credit of seventy-five (75%) per cent of the 1942 tax liability of the petitioner, Frank Costello, in computing the tax liability for the joint years of 1942 and 1943 pursuant to the Current Tax Payment Act of 1943.

n) Upon information and belief the petitioners, Frank Costello and Loretta B. Costello, reported all the taxable partnership income received by them from the Louisiana Mint Company, as disclosed by partnership returns for the fiscal year ending November 30, 1943.

o) That petitioners, Frank Costello and Loretta B. Costello, filed a timely joint Federal Income Tax Return for the calendar year 1947, reporting therein all of their taxable income, showing a net income of $17,307.23 and paid the tax due thereon.

p) That the petitioners, Frank Costello and Loretta B. Costello, paid the entire mortgage interest claimed on the return for the calendar year 1947 to the Home Title Guaranty Company, 51 Willoughby Street, Brooklyn 1, New York.

q) That the petitioner, Frank Costello, paid the loan interest of $1,000.00 on account of a standing indebtedness, which interest payment was substantiated.

r) That the interest payment to the Collector of Internal Revenue of $13,768.74 and additional interest, is properly deductible in the calendar year 1944, but, in any event, the proper amount which has been undetermined should be credited as a payment by the petitioner, Frank Costello.

s) That the contribution of $25.00 is a proper deductible item as a charitable contribution during the calendar year 1947.

Exhibit A Annexed to Affidavit of Lloyd F. MacMahon

t) That petitioners, Frank Costello and Loretta B. Costello, filed a timely joint Federal Income Tax Return for the calendar year 1948, reporting therein all of their taxable income, showing a net income of $12,325.30 and paid the tax due thereon.

u) That the petitioners, Frank Costello and Loretta B. Costello, paid the entire mortgage interest claimed on the return for the calendar year 1948 to the Home Title Guaranty Company, 51 Willoughby Street, Brooklyn 1, New York.

v) That the bad debt during the calendar year 1948 is represented by a personal loan made by the petitioner, Loretta B. Costello, to the Crescent Music Corporation and was a proper deduction.

w) That petitioners, Frank Costello and Loretta B. Costello, filed a timely joint Federal Income Tax Return for the calendar year 1949, reporting therein all of their taxable income, showing a net income of $22,110.70 and paid the tax due thereon.

x) That the petitioners, Frank Costello and Loretta B. Costello, paid the entire mortgage interest claimed on the return for the calendar year 1949 to the Home Title Guaranty Company, 51 Willoughby Street, Brooklyn 1, New York.

y) That the depreciation claimed by the petitioners, Frank Costello and Loretta B. Costello, is allowable in the total amount claimed for the calendar year 1949.

z) That the petitioners, Frank Costello and Loretta B. Costello, filed a timely joint Federal Income Tax Return for the calendar year 1950, reporting therein all of their taxable income, showing a net income of $76,701.09 and paid the tax due thereon.

aa) That the petitioners, Frank Costello and Loretta B. Costello, paid the entire mortgage interest claimed on the

return for the calendar year 1950 to the Home Title Guaranty Company, 51 Willoughby Street, Brooklyn, 1, New York.

bb) That the depreciation claimed by the petitioners, Frank Costello and Loretta B. Costello, is allowable in the total amount claimed.

cc) That the deduction for legal fees paid to attorneys during the calendar year 1950 were for services rendered and were properly deducted as ordinary expense and not as a deduction against capital gain.

dd) That during the years 1943 to 1945, inclusive, the petitioners, Frank Costello and Loretta B. Costello, received substantial income from business and property owned by them and located in the Sovereign State of Louisiana.

ee) That pursuant to the laws of Louisiana, said income and property were subject to the community property laws thereof.

ff) That by reason of said laws, the petitioners, Frank Costello and Loretta B. Costello, had the right to elect to file their income tax returns with the Bureau of Internal Revenue on the community property and community income basis.

gg) That for said calendar years 1943 to 1945, inclusive, the petitioners, Frank Costello and Loretta B. Costello, duly filed income tax returns and payments were made thereunder under protest, without the benefit of dividing the said Louisiana income on a community property and community income basis.

hh) That as a result thereof, the petitioners, Frank Costello and Loretta B. Costello, made overpayments in tax amounting to approximately $12,902.50.

Exhibit A Annexed to Affidavit of Lloyd F. MacMahon

ii) That waivers extending the Statute of Limitations were duly signed and filed by the petitioners, Frank Costello and Loretta B. Costello, for each of the returns filed by them covering the affected years involved herein, which waivers would have expired on June 15, 1954.

jj) That the petitioners, Frank Costello and Loretta B. Costello, reported all of the income known to be earned by them at the time of filing their respective income tax returns for the years in question and that said returns were filed in good faith and without any intent to evade the payment of taxes.

kk) That the deductions claimed by the petitioners, Frank Costello and Loretta B. Costello, on each of their respective income tax returns were claimed in good faith and based upon personal knowledge or upon information and belief.

WHEREFORE, the petitioners pray that this Court may hear the proceeding and make the following determinations:

1. That there is no deficiency due from the petitioners for the calendar years 1941 to 1950, inclusive, jointly or severally, or for any of such years.

2. That any alleged deficiency or any omission from reported income was not the result of negligence, wilfulness, fraud or intent to evade the payment of income tax or any part thereof.

3. That the deductions and credits appearing upon the petitioners' income tax returns were proper.

4. That the petitioners, Frank Costello and Loretta B. Costello, made overpayment in income taxes in the sum

of $12,902.50 and such additional amounts that may be found to have been overpaid by them, for all of which the petitioners claim refund and credit.

/s/ JOSEPH LEARY DELANEY
Joseph Leary Delaney
Counsel for Petitioners
350 Fifth Avenue
New York 1, N. Y.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

FRANK COSTELLO, being duly sworn, says that he is one of the petitioners above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ FRANK COSTELLO
Frank Costello

Subscribed and sworn to before
me this 12th day of May, 1953.

E. E. THOMPSON /s/
Warden authorized by the
Act of Congress February 11, 1938
to administer oaths.

Exhibit A Annexed to Affidavit of Lloyd F. MacMahon

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

LORETTA B. COSTELLO, being duly sworn, says that she is one of the petitioners above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ LORETTA B. COSTELLO
Loretta B. Costello

Subscribed and sworn to before
me this 12th day of May, 1953.

MARGUERITE C. HAYES /s/
MARGUERITE C. HAYES
Notary Public, State of New York
No. 31-1721400
Qualified in New York County
Certificates filed in the following offices:
County Clerk; Bronx, Kings, Westchester
Register: New York, Bronx, Kings
Commission Expires March 30, 1955

Affidavit of W. T. Leath Read in Opposition to Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:

W. T. LEATH, being duly sworn, deposes and says:

1. He is a Special Agent, Intelligence Division, Bureau of Internal Revenue. He is making this affidavit in opposition to defendant's motion for a bill of particulars.

2. During the course of the investigation of attempted evasion of taxes by the defendant, your deponent, on October 16, 1952, wrote a letter to Joseph Leary Delaney, attorney for the defendant, Frank Costello, offering him an opportunity to confer with representatives of the Bureau of Internal Revenue concerning questionable items which had arisen during the investigation. A copy of that letter is hereto annexed as Exhibit B.

3. Mr. Delaney never acknowledged receipt of this letter and never accepted this opportunity to confer as to the very items falsely reported in defendant's returns the nature of which he now asks for in this motion.

(Sworn to by W. T. Leath on June 1st, 1953)

Exhibit B Annexed to Affidavit of W. T. Leath

OFFICE OF THE DISTRICT COMMISSIONER
253 Broadway, New York 7, New York

INTELLIGENCE

October 16, 1952

WTL:fgl

Mr. Joseph Leary Delaney, Esq.
350 Fifth Avenue
New York, New York

In re: Frank Costello and
Loretta B. Costello
115 Central Park West
New York, New York

Dear Mr. Delaney:

In connection with an investigation of the tax returns of the above-named taxpayers for the years 1941 to 1950, inclusive, it is the desire of this office to offer the taxpayers an opportunity to explain any questionable items that may have arisen during the investigation.

In view of the above, it is requested that you inform this office as to whether or not you desire to allow either of the taxpayers to be questioned and whether or not either you or the taxpayers' other representative, Mr. George Wolf, desires a conference in connection with the present investigation.

Your prompt attention to the above matter will be appreciated.

Very truly yours,

(s) W. T. LEATH
W. T. Leath,
Special Agent.

Affidavit of Harold B. A'Hearn Read in Opposition to Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:

HAROLD B. A'HEARN, being duly sworn, deposes and says:

1. He is the Director of Internal Revenue for Upper Manhattan and is making this affidavit in opposition to defendant's motion for a bill of particulars.

2. On March 6, 1953 he caused two letters prepared in his office to be mailed, one to the defendant himself, and one to the defendant and his wife, Loretta B. Costello. These letters advised the defendant and his wife that their income tax liability disclosed deficiencies and advised them that assessment of those deficiencies had been made under the provisions of the internal revenue laws applicable to jeopardy assessments. The two letters combined specified deficiencies for the calendar years 1941 through 1950.

3. Accompanying the letters referred to above were statements prepared in my office showing adjustments to net income, explanation of adjustments, and the computation of tax for each of the years 1941 through 1950.

Annexed hereto as Exhibits "C", "D", "E" and "F" are the statements attached to these letters relating to the calendar years 1946, 1947, 1948 and 1949, respectively.

(Sworn to by Harold B. A'Hearn on May 29th, 1953)

Exhibit D Annexed to Affidavit of Harold B. A'Hearn

Statement

Name Frank Costello and Loretta B. Costello

Schedule ..... Year ended December 31, 1947

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return		$17,307.23
As corrected		92,025.01
Net adjustment as computed below		74,717.78
Unallowable deductions and additional income:		
(a) Other income	$90,797.76	
(b) Mortgage interest	48.26	
(c) Loan interest	1,000.00	
(d) Contributions	25.00	
TOTAL		$91,871.02
Nontaxable income and additional deductions:		
(e) Interest paid	$13,768.74	
(f) Contributions	3,384.50	
TOTAL		$17,153.24
Net adjustment as above		74,717.78

Exhibit D Annexed to Affidavit of Harold B. O'Hearn

Frank Costello and Loretta B. Costello — Statement

Taxable Year Ended December 31, 1947

EXPLANATION OF ADJUSTMENTS

(a) It has been determined that you earned taxable income in the amount of $90,797.76 which you did not report on your return.

(b) The deduction for mortgage interest claimed on your return is disallowed to the extent shown inasmuch as it has not been substantiated as allowable under the provisions of the Internal Revenue Code.

(c) The deduction for loan interest claimed on your return is disallowed to the extent shown inasmuch as it has not been substantiated as allowable under the provisions of the Internal Revenue Code.

(d) The deduction for contributions claimed on your return is disallowed to the extent shown for items not allowable under the provisions of the Internal Revenue Code.

(e) You have been allowed an additional deduction for interest paid in the amount of $13,768.74.

(f) You have been allowed an additional deduction for contributions in the amount of $3,384.50.

Exhibit D Annexed to Affidavit of Harold B. A'Hearn

Statement

Name Frank Costello and Loretta B. Costello

Schedule No..... Year ended December 31, 1947

COMPUTATION OF INCOME TAX — INDIVIDUAL

FOR CALENDAR YEARS 1946 AND 1947

1.	Net income, from Schedule No.	$92,025.01
2.	Less: Exemption	1,000.00
3.	Balance subject to tax	$91,025.01
4.	Combined tentative normal and surtax** ..	59,511.76
5.	Less: 5 percent of amount on line 4	2,975.59
6.	Total income tax	56,536.17
7.	Total alternative tax, from Schedule No.	———
8.	Less: Income tax paid to a foreign country* ... $——— Income tax paid at source*	
9.	Income tax liability	56,536.17
10.	Income tax liability disclosed by return..	5,085.94
11.	Deficiency in income tax	$51,450.23
	50% penalty asserted under provisions of sec. 293(b)	25,725.12

Exhibit D Annexed to Affidavit of Harold B. A'Hearn

Penalty asserted under provisions of sec. 294(d)(2)	2,384.95
Total Penalties	28,110.07

* Not applicable if taxpayer elects to take the Standard Deduction.

** If line 3 above included partially tax exempt interest see tax computation instruction.

(UNY #307)

Exhibit E Annexed to Affidavit of Harold B. A'Hearn

Statement

Name Frank Costello and Loretta B. Costello

Schedule ..... Year ended December 31, 1948

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return		$12,325.30
As corrected		82,311.81
Net adjustment as computed below		69,986.51
Unallowable deductions and additional income:		
(a) Other income	$58,275.60	
(b) Mortgage interest	43.62	
(c) Bad debt	14,027.79	
TOTAL		$72,347.01
Nontaxable income and additional deductions:		
(d) Contributions	$ 2,360.50	
TOTAL		$ 2,360.50
Net adjustment as above		69,986.51

Exhibit E Annexed to Affidavit of Harold B. A'Hearn

Frank Costello and Loretta B. Costello — Statement

Taxable Year Ended December 31, 1948

EXPLANATION OF ADJUSTMENTS

(a) It has been determined that you earned taxable income in the amount of $58,275.60 which you did not report on your return.

(b) The deduction for mortgage interest claimed on your return is disallowed to the extent shown inasmuch as it has not been substantiated as allowable under the provisions of the Internal Revenue Code.

(c) It has been determined that $14,027.79 claimed on your return as a bad debt represented a capital loss under the provisions of the Internal Revenue Code.

(d) You have been allowed an additional deduction for contributions in the amount of $2,360.50.

Exhibit E Annexed to Affidavit of Harold B. A'Hearn

Statement

INDIVIDUAL INCOME TAX

Name Frank Costello and Loretta B. Costello

Schedule..... Year December 31, 1948

TAX COMPUTATION 1948

1.	Corrected net income sch. ( )		$82,311.81
2.	Less exemptions (2) x $600.00		1,200.00
3.	Income subject to tax		81,111.81
4.	Single person or married person making separate return. Line (3) above		
5.	Joint return of husband and wife one half of Line (3) above		40,555.91
6.	Tentative Tax	20,123.58	
7.	Adjust for partially tax exempt interest		
8.	Net tentative tax.....		20,123.58
9.	Less Tax Reduction		
	(a) 0 — $400.00 @ 17% ..	68.00	
	(b) $400 — $100,000 @ 13%	2,366.83	
	(c) Over $100,000.00 @ 9.75%		
	Total Tax Reduction		2,434.83

Exhibit E Annexed to Affidavit of Harold B. A'Hearn

10.	Normal & Surtax for separate returns....	17,688.75
11.	Normal & Surtax for joint returns Multiply Line 10 by 2	35,377.50
12.	Alternative Tax if applicable	
13.	*Less Income Tax Payments to a foreign country or U. S. possession Income Tax paid at source	
14.	Tax Liability	35,377.50
15.	Tax Liability disclosed by return.....	2,153.48
16.	Deficiency	33,224.02
	50% penalty asserted under provision of sec. 293(b)	16,612.01
	*If Standard Deduction was used in arriving at amount as shown on Line One above disregard Line 13. Penalty asserted under provisions of sec. 294(d)(2).....	1,625.97
	Total Penalties	18,237.98

(UNY #312)

Exhibit F Annexed to Affidavit of Harold B. A'Hearn

Statement

Name Frank Costello and Loretta B. Costello

Schedule ..... Year ended December 31, 1949

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return		$22,110.70
As corrected		80,183.73
Net adjustment as computed below		58,073.03
Unallowable deductions and additional income:		
(a) Other income	$59,059.22	
(b) Mortgage interest	39.36	
(c) Depreciation	10.38	
TOTAL		$59,108.96
Nontaxable income and additional deductions:		
(d) Contributions	$ 837.00	
(e) Interest paid	198.93	
TOTAL		$ 1,035.93
Net adjustment as above		58,073.03

Exhibit F Annexed to Affidavit of Harold B. A'Hearn

Frank Costello and Loretta B. Costello. Statement

Taxable Year Ended December 31, 1949

EXPLANATION OF ADJUSTMENTS

(a) It has been determined that you earned taxable income in the amount of $59,659.22 which you did not report on your return.

(b) The deduction for mortgage interest claimed on your return is disallowed to the extent shown inasmuch as it has not been substantiated as allowable under the provisions of the Internal Revenue Code.

(c) This deduction for depreciation claimed on your return is disallowed to the extent shown inasmuch as it is not allowable under the provisions of the Internal Revenue Code.

(d) You have been allowed an additional deduction for contributions in the amount of $837.00.

(e) You have been allowed an additional deduction for interest paid in the amount of $198.93.

Exhibit F Annexed to Affidavit of Harold B. A'Hearn

Statement

INDIVIDUAL INCOME TAX

Name Frank Costello and Loretta B. Costello

Schedule ..... Year December 31, 1942

TAX COMPUTATION

1. Corrected net income sch. ( )		$80,183.73
2. Less exemptions (2) x $600.00		1,200.00
3. Income subject to tax		78,983.73
4. Single person or married person making separate return. Line (3) above		
5. Joint return of husband and wife one-half of line (3) above		39,491.87
6. Tentative tax	$19,389.39	
7. Adjust for partially tax exempt interest	—	
8. Net tentative tax		19,389.39
9. Less tax reduction		
(a) 0—$ 400 @ 17%	68.00	
(b) $400—$100,000 @ 12%	2,278.73	